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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7923 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MUMTAZKHAN SON OF MOHD. ISTIYAKKHAN PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR AJ DESAI ASST GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 31/01/2000

ORAL JUDGEMENT

#. Heard Mr.H.R.Prajapati, learned advocate for the petitioner and Mr.A.J.Desai, learned AGP appearing for respondents No. 1, 2 & 3.

#. The detention order dated 21-5-99 passed by respondent No. 1 - The District Magistrate, Banaskantha against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure- C interalia indicates that two criminal cases were registered against the petitioner at Shihori police station on 28-2-99 for the alleged offences under Section 25(1) of Arms Act and 399 and 34 of Indian Penal Code. That both the cases are pending for investigation. That in consideration of material collected by the investigating officer in respect to said two offences, the respondent No.2 - The District Magistrate, Banasknta as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the impugned order is bad in law on account of the non application of mind. That the detaining authority himself has observed that at the time of passing of the impugned order, the petitioner / detenu was in judicial custody. However, the petitioner is likely to continue his anti social activities through his accomplice. The detaining authority has failed to consider the aspect of cancellation of bail if granted to the petitioner in the cases registered against him and as such the impugned order is bad in law.

#. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND OTHERS 1995 (2) GLR 1134, the Division Bench of this Court has expressed the view that non consideration of less drastic remedy available under Section 437(5) of the CrPC claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction, thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal

No : 1056 of 1999 decided on 15-9-99 by this Court (Coram : C.K.Thakker & A.L.Dave, JJ.).

#. On scrutiny of papers, in the instant case, the grounds of detention discloses that there is no other information by way of anonymous witnesses in respect to repetition of alleged anti social activities undertaken by the petitioner. That the petitioner was arrested on 18-3-1999 and since then the petitioner was in judicial custody. However, on 21-5-1999, the respondent No.2 has recorded a statement in the grounds of detention that the petitioner has been moving in the Ambassador Car bearing registration No : DL-4C-8324 with his accomplice to cause dacoity on the shops of goldsmith within the territory of District Banaskantha. That on account of said activities, it is necessary to detain the petitioner. That the said satisfaction cannot be said to be a logical conclusion disclosing the due application of mind in absence of any material or fact. That the petitioner is likely to repeat his activities after getting released on bail being mere apprehension cannot be the basis for detention order. Even if the petitioner succeeds in getting bail, then also the authority could have prevented the petitioner through claiming cancellation of the same on the facts and material collected and hence, it is difficult to uphold the impugned order.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 21-5-99 passed by respondent No.2 - The District Magistrate, Banaskantha against the petitioner is hereby quashed and set aside. The petitioner - MUMTAZKHAN SON OF MOHD. ISTIYAKKHAN PATHAN is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 31-1-2000 [A.K.Trivedi, J.]

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